IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12377 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IBRAHIM SHEIKH DOST MOHAMMED SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/01/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the order dated 14.3.2002, by which he is detained under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short) as a

"dangerous person". Along with the order of detention, he is served with the grounds of detention. It is mentioned in the said grounds that the petitioner is indulging himself in criminal activities and he is guilty of committing the offence of robbery. Two criminal cases are lodged agonist the petitioner. One is registered as I Guna Register No.16 of 2002, for offences punishable under Sections 399, and 120-B of the Indian Penal Code read with 25(1)A of the Arms Act and 135 of the Bombay Police Act. There is also reference to another case, viz., I Guna Register No.2 of 2002, for offences punishable under Sections 394 and 34 of the Indian Penal Code. In the grounds of detention, statements of certain witnesses are also produced, wherein it is stated that the petitioner is a "dangerous person" and his activities are required to be controlled by detaining him under PASA. Particulars of the two criminal cases are also annexed at page 18. The said order is challenged by the petitioner on the ground that so far as case registered as I Guna Register No.2 of 2002 is concerned, which is under Section 394 read with Section 34 of IPC, the petitioner is still in judicial custody in connection with the aforesaid case and he had not even applied for bail. In the detention order, it is mentioned that in one case, the petitioner is released on bail and in the other case, viz., I Guna Register No.2 of 2002, he si in judicial custody and and in the said case, he is likely to be released on bail. It is argued by the learned Advocate for the petitioner that it is not stated in the order as to on what basis the detaining authority has reached the conclusion that even in the second case, he is likely to be released on bail.

The learned Advocate for the petitioner placed reliance on the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675. The Honourable Supreme Court held as under in paragraphs 4, 6 and 7 :-

> " ... ...
>
> 4. In Agustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should

not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reds as below:-

> "Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."
>
> xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of

> the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.
>
> ... ..."

It is, however, required to be noted that in one case, the petitioner is already released on bail. Perhaps the detaining authority might have thought that he may be released on bail at any time. Of course, it is equally true that in the detention order, the detaining authority has not mentioned as to how he has reached the conclusion that the detenu may be released in connection with the other case. The learned Advocate for the petitioner has also fairly stated that looking to the seriousness of the complaint, the petitioner has not even applied for bail in connection with the aforesaid case and even when there is no bail application pending at the instance of the petitioner, the apprehension on the part of the detaining authority that he is likely to be released on bail, is not justified. The learned Advocate for the petitioner submitted that looking to the fact that the petitioner is found to be indulging in criminal offences, even the Courts below do not take such bail matters lightly, especially when there is no application for bail. In that view of the matter, the detaining authority is required to consider the matter in that angle.

Considering the aforesaid view of the matter, in my view, the detaining authority should have at least considered whether any application for bail is pending in connection with the aforesaid offence, for which he is in judicial custody. Since it is not stated in the order as to on what basis the detaining authority has reached the conclusion that even in the second case, he is likely to be released on bail, the petition requires to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

29th January, 2003 (P.B. Majmudar, J.)

***

(apj)